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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

1998 Biennial Regulatory Review --) CC Docket No. 98-94
Testing New Technology)

COMMENTS OF BELL ATLANTIC[1] ON NOTICE OF INQUIRY

I. Introduction and Summary

All carriers should be permitted to conduct technical and market trials of new technologies, and of new applications of existing technologies, unencumbered by advance regulatory approvals or other constraints.

As the Commission acknowledges, Congress has established a broad policy to encourage the provision of new technologies and services to the public. *See Notice of Inquiry*, FCC 98-118, ¶ 2 (rel. June 11, 1998) ("NOI"); 47 U.S.C. § 157(a). And Section 706 of the 1996 Act authorizes the Commission to use a variety of tools to remove barriers to infrastructure investment in order to encourage deployment of advanced telecommunications capabilities. *See* NOI at ¶ 2. Any unnecessary constraints or delays in allowing carriers to determine whether to give the public needed services, whether using new or existing technologies, runs counter to these broad Congressional mandates.

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

The Commission can facilitate the testing of new technologies and services only by eliminating all filing or advance approval requirements prior to conducting technical or market trials. Even streamlined or expedited approval requirements will inhibit investment and experimentation and is unnecessary to protect the public or competition.

Price regulation of a market trial would be counterproductive.[2] The primary purpose of a market trial is to assess demand for a new service, and carriers should be free to try different price levels and structures. The marketplace will determine if the service is needed and, if so, whether it is being properly priced.

The Commission should also waive other regulatory requirements for technical and market trials. For example, carriers should be free to test a variety of interfaces during a trial and, if necessary, vary those interfaces quickly without issuing a network disclosure. Likewise, carriers should be allowed to "bundle" customer premises equipment ("CPE") and information services with their telecommunications services during technical and market trials. Such bundling will facilitate the trials and will allow the carrier to vary technical specifications easily and quickly.[3]

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[2] Price levels are not an issue in technical trials, because participants are generally not charged.

[3] As the Commission asks, this filing does not address Bell company provision of information services, which are being addressed in CC Docket Nos. 95-20 and 98-10. *See* NOI at n.23.

II. Technical and Market Trials Should Not Require Prior Commission Approval.

The Commission's goal in this inquiry is to "ensure that our regulation does not unnecessarily discourage applicants from conducting experiments involving new technology and new applications of existing technology." NOI at ¶ 1. The only way that this can happen is if the Commission removes all prior approval and pricing requirements from market and technical trials.

Even a streamlined approval process would inhibit trials of new technologies and services. Under Computer Inquiry III, the Commission provides a 90-day review process for market trials of new enhanced services. *BOC Notices of Compliance with CEI Waiver Requirements for Market Trials of Enhanced Services,* 4 FCC Rcd 1266 (1988). With rapid advances in technology and services, however, even a 90-day delay in testing the market could inhibit investment, particularly where "non-dominant" competitors have no such waiting period.

Moreover, whether or not the Commission requests public comment, competitors could file unsolicited comments, or conduct *ex parte* meetings, in an effort to delay approval. Such delays are not just theoretical. Bell Atlantic's request simply to extend its already approved enhanced Internet Access Service to additional states has been held up for well over a year by a barrage of meritless attacks by WorldCom and its affiliates, which are among the largest competitors of Bell Atlantic's proposed enhanced service offering.[4] These delays have deprived the public in some Bell Atlantic states of the Internet access services that customers in other Bell Atlantic states have enjoyed for

[4] Amendment to Bell Atlantic CEI Plan to Expand Service Following Merger With NYNEX, CCB Pol. 96-09 (filed May 5, 1997).

fully two years, while WorldCom provides its competing service unabated. A prior approval requirement for technical and market trials will give competitors similar opportunities to press for delays while using the information filed about the proposed trial to their competitive advantage. *See* NOI at ¶ 13, where the Commission suggests that a public application and review process could discourage experimentation.

Nor would retaining any form of advance approval requirement serve any legitimate purpose. Carriers initiating trials of new technologies and new applications of existing technologies cannot exercise market power, because the services they seek to trial do not yet exist, or at least they do not offer them. Cross-subsidy is not a concern, because, under price caps, the prices charged for existing regulated services are not based upon current costs. Because the carrier has no ability to recover the costs of the trial from other regulated services, it has no reason to attempt to shift those costs.

III. Market Trials Should Not Be Subject to Tariff or Price Regulation.

There should not be any tariffing requirements or other pricing limitations on market trials.

One of the purposes of a market trial is to test demand, and such tests could involve test-marketing the service at a variety of rates, terms, and conditions. A requirement to file tariffs would reduce the carrier's flexibility to charge different rates to

different customers and to change rates, terms, and conditions quickly as test results warrant.[5] That would severely limit the value of the test.

Nor would tariffing serve any useful purpose. The purpose of a market trial is to test the market for a new technology or service that the carrier does not offer. The trial participants will tell the initiating carrier the extent of demand and whether the proposed prices, terms and conditions are reasonable. Without complete pricing flexibility, including no restrictions on price floors or ceilings and no obligation to cost-justify the rates, the carrier would be hampered in its ability to conduct a reliable market trial.[6]

IV. Other Regulatory Requirements Should Be Waived.

By the same token, most other regulatory provisions should be inapplicable to technical or market trials. For example, any requirement to disclose network interface specifications would make a technical trial impossible. Until the

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[5] Likewise, the Commission should not regulate whether customers may opt out of market trials in progress without penalty, as it suggests. *See* NOI at ¶ 22. So long as the trial participants are fully informed of all applicable terms and conditions and agree to participate in the trial under those conditions, they should be bound by those conditions. Potential participants should be informed that the trial is of limited duration with no guarantee that there will be a subsequent service offering

[6] Nor should the Commission require Section 214 certification for technical or market trials. As it acknowledges, the Commission it proposed a limited exemption to Section 214 certification a year and a half ago. Notice at ¶ 14, citing *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, 12 FCC Rcd 1111 (1997). Bell Atlantic urged the Commission to eliminate as unnecessary all Section 214 requirements for domestic services of price cap carriers. *See* Comments of Bell Atlantic, CC Docket No. 97-11 (filed Feb. 24, 1997). An important step in encouraging carriers to invest in new technologies and services would be to adopt an order quickly eliminating all Section 214 requirements for domestic services.

technology is tested and proven, there is nothing to disclose, and any advance disclosure could quickly become obsolete in light of changes that may be needed during the course of the trial. On the other hand, unless the carrier is free to change the interface specifications as often as needed during the course of the trial without having to issue a disclosure, the trial could prove valueless. Similarly, interface requirements may need to be adjusted during a market trial to remedy technical problems that arise during the course of the trial or to meet customer demands to add, subtract, or change features. Even if such adjustments proved unnecessary in a given instance, an advance interface disclosure requirement would unduly delay commencement of the market trial and with it potential broader implementation of the new technology or service. Because any follow-on service would comply with any applicable network interface disclosure requirements, interconnectors and CPE manufacturers will be fully protected.

Similarly, the Commission should permit the carrier that conducts the technical or market trial to require that participants take all telecommunications and information services and CPE from that carrier. Allowing such "bundling" during the trials will allow the carrier to change or adjust the CPE and services as warranted, either for technical reasons or to adjust to interim market trial results. For example, during the course of a market trial, the carrier will be able to vary the equipment, or equipment-service combination, to determine the method of providing the service that is the most "user-friendly" and acceptable to the participants. If technical problems arise, during either a technical or market trial, the carrier should be able to make whatever changes to the telecommunications service that may prove necessary without concern for the effect of those changes on CPE or information services that participants may have obtained

from other vendors. Involving an unknown number of other vendors in the trial could become unwieldy and could cause disputes if the specifications change frequently.

In addition, because some of these trials may test proprietary technology, carriers should not be required for competitive reasons to involve other entities that may be competitors. A requirement to do so could eliminate any market advantage that the carrier would hope to achieve as a result of the information learned in the trial and could cause the carrier to abandon the project. This will deprive the public of the technologies and services which this proceeding is intended to yield. Carriers should be permitted to collaborate with one or more additional providers of services or equipment in conducting technical and market trials but should not be required to do so.

V. The Commission Should Allow a Trial To Continue Pending Further Regulatory Approvals.

An eighteen month period should suffice to allow a carrier to conduct either a technical or a market trial of new technologies or services. In unusual circumstances, carriers should have the right to substantiate the need for a longer period, either before the trial begins or while it is in progress. The Commission should not limit the number of participants and locations in which the trial is conducted. The carrier should have discretion to conduct a trial in as many areas, and with as many participants, as are needed to conduct a valid market trial.

Once the trial is completed, any follow-on service would be subject to whatever regulatory requirements are applicable at the time to the particular carrier and service, so competition and the public will be fully protected. The trial will be of limited duration, and there is no guarantee that the carrier will offer the service at the end of the

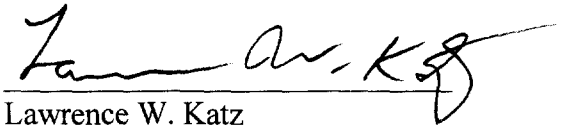
trial. As a result, participants will be free to take any available service from any provider at the conclusion of the trial, and competition cannot be adversely affected.

If the carrier chooses to offer a follow-on service, it should be allowed to continue the trial to existing participants who wish to continue receiving the service, so long as it has filed for any necessary approvals and issued any necessary notices, such as network interface disclosures, before the trial termination date.[7] In this way, trial participants who choose to subscribe to the follow-on service will not be forced to terminate service during the regulatory delays.

VI. Conclusion

Accordingly, to promote new technologies and services, the Commission should allow technical and market trials to be conducted without the need for regulatory filings or approvals.

Respectfully Submitted,



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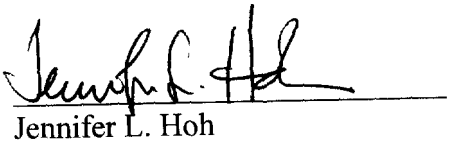
[7] Those participants who choose not to continue receiving service after the initial trial period would be able to cancel without penalty.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 1998 a copy of the foregoing "Comments of Bell Atlantic" was served on the parties on the attached list.



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